IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 708 of 2002
with
CIVIL APPLICATION No 6615 of 2002
in
SPECIAL CIVIL APPILCATION NO 4167 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
BHIKHABHAI MANGABHAI VASAVA

Appearance:
1. LETTERS PATENT APPEAL No. 708/02 & CA 6615/02
MR HARDIK C RAWAL for Appellant No.
MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 20/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Admit. Shri G.K.Rathod, learned Counsel waives service of notice for the respondent - workman. At the joint request of learned Counsel for the parties the matter is heard and finally disposed of today by this order.

2. This Letters Patent Appeal is arising out of the Judgment and order dated 16.4.2002 passed by the learned Single Judge of this Court (H.K.Rathod, J.) in Special Civil Application No.4167 of 1992, dismissing the writ petition filed by the appellant - Gujarat State Road Transport Corporation (for short "the Corporation") against the impugned Judgment and Award dated 23.3.1992 passed by the Labour Court, Jamnagar in Reference Case No.939 of 1990 (old case No.291 of 1988) accepting the Reference and quashed and setting aside the termination order of the workman and ordering the Corporation to reinstate the workman in service with continuity in service, but without backwages.

3. Learned Counsel Shri Raval for the appellant Corporation vehemently submitted that the Labour Court committed a serious jurisdictional error in setting aside the order of dismissal from service of the workman passed by the Corporation as by suppressing the material fact and playing fraud with the Corporation he again got the job of Conductor in the Rajkot Division of the Corporation though he was earlier dismissed from service as Conductor from Bhavnagar Division of the Corporation.

Mr.Rathod submitted the Labour Judge himself observed in Para : 11 of his impugned Judgment that ordinarily he would not like to interfere with the order of dismissal on the facts and circumstances of the case, yet he exercised his discretion u/s.11(A) of the Industrial Disputes Act only because one order Ex.25 passed by Shri B.M.Lakhtariya, Chief Divisional Transport Officer of the S.T. Corporation at Junagadh in Default Case No.346 in case of Damankumar Venishanker Conductor, who was dismissed from service by the Corporation, whose two Departmental Appeals were dismissed, inspite of it he was given job of 'Driver' in the Corporation by placing him on the minimum basic pay on the cadre of driver for 2 years. He submitted that merely because in one case, one officer of the Corporation committed mistake and appointed another person on different post that can never become precedent in all cases to come where persons are

dismissed from service on the serious charge of misappropriation. He submitted that even in Default case No.346 Conductor - Damankumar Venishanker, who suppressed material fact of dismissal from service of the Corporation was not posted on the post of Conductor. He was posted on a different post of driver, where he had hardly any opportunity of committing similar misconduct of misappropriating the public funds. Shri Raval further submitted that the respondent workman was found guilty in a case of misappropriation and dismissed from service as Conductor from Bhavnagar Division of the Corporation, which was challenged by him in Reference case which was pending before the Industrial Court. By suppressing this most important and material fact he got his name registered in the Employment Exchange, Rajpipal and, thereafter, filled up Application form No.86268 for the post of Conductor in Rajkot Division wherein also he suppressed the material of his past experience of Conductor in Bhavnagar Division and his dismissal from service on the charge of misappropriation. He submitted that if he had mentioned this fact in his Application form then he would not have been called for the interview. Under the circumstances the Labour Court committed grave jurisdictional error in exercising his discretion under Section 11(A) of the I.D.Act.

4. Shri Raval then submitted that the learned Single Judge committed the same error which was committed by the Labour Court in its Judgment in placing heavy reliance of the order at Ex.25 passed by Shri Lakhtariya, Chief Divisional Traffic Officer, S.T., Junagadh in Default Case No.346 in case of Conductor - Damankumar Venishanker. Shri Raval submitted that the learned Single Judge was wholly in error in observing that when the order (Exh.25) was considered by the Labour Court and the Labour Court was of the view that if the departmental Authority can take lenient view in the matter like the cases before hand, then why the Labour Court, upon which the duty is cast to enter into the propriety of the punishment, should not interfere with the order of dismissal.

5. In view of the peculiar facts and circumstances Shri Rathod, learned Counsel appearing for the respondent - workman frankly conceded that the Labour Court has wrongly exercised its jurisdiction u/s.11(A) of the I.D. Act in favour of the respondent - workman.

6. In view of the above, we are of the clear opinion that a person, who is dismissed from service on a serious charges of misappropriation can never be appointed again on the same post and that too when he got the appointment

by suppressing the material fact of his earlier dismissal from service. Merely because in one case some officer of the Corporation committed mistake and appointed another person, that too on a different post, that can never become precedent, otherwise the Corporation would not be in a position to terminate the services of any person who was earlier dismissed from the service of the Corporation on a serious charges of misappropriation.

7. In view of the above Shri Rathod, learned Counsel, appearing for the respondent - workman, was right in conceding that the Labour Court committed jurisdictional error in this case by ordering reinstatement in service of the respondent workman by setting aside the termination order passed by the Corporation.

8. In view of the above, we are of the clear opinion that the learned Single Judge was wrong in dismissing the petition on the ground that if the departmental Authority can take lenient view in the matter in such cases then why the Labour Court can not take such lenient view as the duty is cast on the Labour Court to enter into the propriety of the punishment.

9. In view of the above discussion this Appeal is allowed and the impugned Judgment and order dated 16.4.2002 passed by the learned Single Judge of this Court (Coram : H.K.Rathod) is hereby quashed and set aside by accepting Special Civil Application No.4167 of 1992 filed by the Corporation and the impugned Judgment and Award dated 23.3.1992 passed by the Labour Court in Reference Case No.939 of 1990 (old case No.291 of 1988) declaring the services of the workman is bad and illegal and order to reinstate the respondent workman in service is hereby quashed and set aside. No order as to costs.

Civil Application No.6615 of 2002 is disposed of as the main Appeal is allowed. No order as to costs.

sd/-

(B. J. Shethna, J.)

Date : June 20, 2003 sd/-

(Akshay H.Mehta,J.)

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